IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, et al. Plaintiffs, vs. Tyson Foods, Inc., et al., Defendants.	**Case No. 4:05-cv-00329-GKF-PJC**

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

Defendants respectfully urge the Court to deny Plaintiffs' Motion for Protective Order (Doc. No. 1853), which seeks to conceal critical information from Defendants and this Court. At bottom, Plaintiffs are attempting to withhold a portion of the survey information underlying Plaintiffs' expert damages reports, even though that information is discoverable under the Federal Rules and essential to testing Plaintiffs' actions in constructing their damages reports. Specifically, Plaintiffs seek to (1) conceal the identities of all of Plaintiffs' survey respondents and (2) prevent Defendants from contacting Plaintiffs' contingent-valuation (CV) survey participants. The material Plaintiffs seek to suppress through the present motion is a subset of the material Defendants seek to compel in their Motion to Compel Production of Expert Materials (Doc. No. 1854), and Defendants urge the Court to consider the parties' submissions on these two motions together. Defendants will strive to avoid repeating arguments here that they have already addressed in their motion.

Plaintiffs' present motion fails to establish good cause for a protective order. In their own motion, Defendants have explained and documented through expert declaration their need for the

information at issue. In contrast, Plaintiffs offer nothing but assertions of counsel. Moreover, Plaintiffs' claims that they are seeking to protect respondents' confidentiality ring hollow: Plaintiffs long ago determined not to promise survey participants confidentiality and have failed to treat as confidential the information they now seek to withhold from Defendants. Finally, contrary to Plaintiffs' assertions, courts have ordered the disclosure of similar materials in circumstances like those here, circumstances that differ substantially from those in the cases on which Plaintiffs rely.

I. Defendants Have Demonstrated A Need for the Survey Information and Plaintiffs Offer No Valid Rebuttal

In support of their Motion to Compel Production of Expert Materials (Dkt. No. 1854), Defendants submitted a six-page, 28-paragraph declaration of damages expert Dr. William H. Desvousges, Ph.D. (Id. Desvousges Decl.) Dr. Desvousges explains that Defendants and their experts need the survey information at issue to test, among other things:

(1) how interviewers actually administered the survey (id. ¶ 10),

(2) how accurately interviewers recorded respondent answers, (id.),

(3) how Plaintiffs went about "educat[ing]" survey participants about the phosphorus "problem" in the wake of the 2006 telephone survey (id. ¶ 16),

(4) how much uncertainty interviewers injected into the damages calculation based on the nonuse values collected after that "educat[ion]" process (id. ¶ 18), and

(5) bias resulting from the actual (versus ideal or scripted) interviews,[1] including interviewers' narrative descriptions of the injury, the way interviewers identified and presented

[1] For example, in the Electronic Record of Comments (EROC) for dwelling unit No. 1361680000480, one of the Westat interviewers discusses having an unscripted conversation with a survey participant about the participant's job as a market researcher. (Dkt. Nos. 1855:

the cause of the "problem" and the proposed solution, the manner in which interviewers asked questions, what interviewers told respondents during the survey, and how the respondents' answers were processed (id. ¶ 19).

In contrast, Plaintiffs' motion offers no analysis or expert authority supporting their assertion that the additional information could not assist Defendants and their experts. For example, Plaintiffs baldly assert that "second interviews of the survey respondents by Defendants could not, as a matter of proper survey techniques, produce any relevant evidence in this case," (Dkt. No. 1853: Pls.' Mot. Prot. Ord. at 9.), but offer no supporting explanation or analysis by anyone with actual expertise in "proper survey techniques." Plaintiffs' unsupported assertions do not establish good cause for a protective order.

In addition, although Defendants will not address in depth here the inaccuracies in Plaintiffs' description of what they produced to Defendants,[2] a few of Plaintiffs' misstatements

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Defs.' Mot. Compel Ex. 19, filed under seal.) In fact, the interviewer training manual provides for unscripted conversations: "Respondent's questions are rarely phrased the same as we have noted them in this manual. . . . Whether the question is ill-phrased or well-phrased, you must answer each question . . . . The responses presented are suggestions; they should not be considered the only suitable responses." (Ex. 1: Stratus 527647 at 4-1.)

[2] In a nutshell, Plaintiffs' assertion that "Defendants already have more than sufficient information to assess the CV Report and the bases for that Report without personal identifying information of participants," (Dkt. No. 1853: Pls.' Mot. Prot. Ord. at 9), is mistaken even accepting Plaintiffs' own characterizations. For example, Plaintiffs' claim that they produced "all materials considered by the authors of [the] CV Report" on January 5, 2009, (id. at 4), is mistaken. Plaintiffs did not fully produce even what they consider to be their complete supporting materials until February 3, 2009, nearly a month after the deadline for such production. (Doc. No. 1854: Defs.' Mot. Compel at 8, 23.)

In addition, Plaintiffs have not to this day produced all of their experts' *actual* considered materials. For example, the zip file in which Plaintiffs' expert Tourangeau describes the results of his conversion calls, which was apparently attached to an email (id. Ex. 24), is not in Tourangeau's files or in any of the other experts' considered material disclosures. These omissions are beyond the scope of the present motions, and Defendants are preparing a separate motion to compel disclosure of such materials. For present purposes, however, the Court should

bear on the issues at hand and require correction. For example, Plaintiffs contend they have provided the "scripts, images, and materials used to conduct the survey interviews." (Doc. No. 1853: Pls.' Mot. Prot. Ord. at 5.) In fact, what Plaintiffs have provided are the materials that *were supposed to be* used to conduct the interviews. The only individuals who know what materials the interviewer *actually* used, what message the interviewer *actually* conveyed, and what response the interviewee *actually* gave (as opposed to the response recorded) are the interviewers and the survey participants. Moreover, as noted above, the script recognizes that each discussion will be unique and frequently off-script, and that one main purpose of the discussions will be for the Plaintiffs' representative to "educate" survey participants about the phosphorous "problem" in the IRW. (Desvousges Decl. ¶ 16.) What Plaintiffs actually said to each respondent to convince them that there is a "problem" is obviously relevant to the amount that the respondents said should be spent to fix the "problem."

Plaintiffs also state that they have provided "electronic data files transmitted from Westat to Stratus containing each of the responses every respondent provided." (Dkt No. 1853: Pls.' Mot. Prot. Ord. at 5.) This is not true. Interviewers asked respondents, "[C]ould you please tell me your full name and the best phone number to reach you at?" (Dkt. No. 1854: Defs.' Mot. Compel Ex. 7.) Interviewers recorded respondents' responses to this inquiry in the Record of Actions, which Plaintiffs have not provided to Defendants. (Id.) Plaintiffs apparently maintained this information in a master electronic database, as evidenced by the presence of the names and telephone numbers in the spreadsheet of 189 survey participants provided to at least four of Plaintiffs' testifying experts. (Dkt. No. 1855: Defs.' Mot. Compel Ex. 19, filed under

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be aware that Plaintiffs' claim that Defendants "already have more than sufficient information to assess the CV Report" fails even under Plaintiffs' own definition of what Defendants need.

seal.) Westat also provided interviewers with resident names and telephone numbers for at least 728 of the sample addresses. (Dkt. No. 1854: Defs.' Mot. Compel Ex. 7.) Plaintiffs have not provided any of the above information to Defendants.

Finally, the complex nature of Plaintiffs' experts' study process, far from lending the results an air of trustworthiness as Plaintiffs suggest, in fact demonstrates the need for a full and complete review of *all* of Plaintiffs' work and data. As Plaintiffs themselves acknowledge, the damages computations generated in their CV study resulted from a lengthy shaping process of one-on-one sessions, focus groups, telephone survey data analysis, pre-tests, and pilot tests, involving three survey firms and Plaintiffs' testifying experts. (Dkt. No. 1853: Pls.' Mot. Prot. Ord. at 4.) Defendants' damages experts need to forensically test this more than two-year shaping process to evaluate the CV method Plaintiffs ultimately employed, and to do so must access to and must have the ability to use the interviewees' identifying information. (See, e.g., Dkt. No. 1854: Defs.' Mot. Compel at 3-5, 18.) Plaintiffs' CV survey workers often had multiple contacts with many of the survey respondents (including one respondent who was contacted at least 13 times) and these workers (sometimes multiple workers) contacted members of the survey sample households by telephone and in-person. (Dkt. No. 1855: Defs.' Mot. Compel Ex. 19, filed under seal.) Thus, whatever the reliability of CV studies in the abstract, Defendants still need to test whether Plaintiffs' particular CV study was reliable, valid, and free of bias in light of its complex nature.

II. Plaintiffs' Experts Neither Promised Survey Participants Confidentiality Nor Treated Participants' Contact Information as Confidential Once They Had It

Plaintiffs also fail to show good cause for a protective order because they have not met their burden to show either that the respondents' information was intended to be confidential in the first place or that Plaintiffs and their experts treated it as confidential after it was created.

See Traveler's Ins. Co. v. Allied-Signal, Inc. Master Pension Trust, 145 F.R.D. 17, 18 (D. Conn. 1992) (denying motion for protective order after finding "plaintiff ha[d] not always preserved the confidentiality of the information . . . it [sought] to protect"); 8 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2043 ("It is for the party resisting discovery to establish, in the first instance, that the information sought is within this provision of [Rule 26(c)]."). On the contrary, any such claim here is contradicted by (1) Plaintiffs' experts' consideration and ultimate rejection of an assurance-of-confidentiality provision in the advance letter mailed to each survey participant, (2) the experts' failure to include a promise of confidentiality in the other materials given to survey participants or train their interviewers to give such a promise, and (3) Plaintiffs' disclosure of "confidential" information outside their survey firm and to Defendants without raising any confidentiality concerns.

First, Plaintiffs and their experts initially considered promising survey respondents confidentiality but abandoned the idea. On February 25, 2008, an associate at Stratus Consulting—the firm coordinating Plaintiffs' experts and the corporate "author" of the natural resource damages (NRD) CV study—emailed Plaintiffs' testifying experts Jon Krosnick and Roger Tourangeau inquiring about the status of the introductory letter to survey participants in advance of the door-to-door interview campaign. (Ex 2: KrosnickCORR0000562.) The Stratus associate wrote:

> Hi Jon and Roger,
>
> David [Chapman] mentioned that you had worked on an advance letter for Westat. Has Westat already seen a copy of this letter? If not, is it ready to be sent?

(Id.) Tourangeau responded: "Here is what Jon and I came up with. We did not share it with Westat, in part because David [Chapman] wasn't sure whether the lawyers would accept the

promise of confidentiality." (Id.) The text that Krosnick and Tourangeau did not share with Plaintiffs' survey firm Westat read as follows:

> Your participation is voluntary and is critical for the success of the study. *All interviews will be strictly confidential, and none of the opinions you express will ever be connected to your name*. Your answers to our questions will be combined with answers from other Oklahoma residents so that we can describe the opinions of the residents of the State.

(Ex. 3: KrosnickCORR0001363 (emphasis added).) This explicit guarantee of confidentiality in the experts' letter did not, however, make the final cut. The corresponding paragraph of the advance letter *actually* mailed out to CV study participants included no promise of confidentiality:[3]

> Your participation is voluntary and is critical for the success of the study. Your answers to our questions will be combined with answers from other Oklahoma residents so that we can describe the opinions of the residents of the state.

(Ex. 4: NRDA Appendix C at Westat Appendix A.2.2.) Thus, although the exact reason for omitting the assurance of confidentiality is unclear, it *is* clear is that Plaintiffs' experts specifically considered but ultimately rejected any promise of confidentiality to participants in the CV survey. Moreover, the advance letter actually sent—omitting the assurance of confidentiality—must reflect the work of either Plaintiffs' attorneys, their testifying experts, or both.[4] Survey firm Westat's own quality-control policies would have prohibited sending out

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[3] A copy of the advance letter actually sent is attached in Appendix C of the NRD report.

[4] Plaintiffs' own records demonstrate that Plaintiffs' testifying experts were directly involved early on in analyzing and shaping the outcomes of the survey firms' work. (See, e.g., Dkt. No. 1854: Defs.' Mot. Compel at 4, 15-17.) The Environmental Protection Unit Chief of Attorney General Edmondson's office also involved itself in the preparation of the advance letter, (Ex. 6: ChapmanCORR0000076; ChampmanCORR0000091; ChapmanCORR0000438), which was apparently mailed to recipients using "generic state letterhead" and envelopes and a logo "playing off the 'home' feel with the circle/HOM image" (apparently referring to the placement

such a letter without an assurance of confidentiality. *See* Westat's "Quality Control During the Interview Process" (Ex. 5: Chapman0000293 on first page under "Introductory Letters" heading) (explaining that "[a]n assurance of confidentiality is included and emphasized" in the "introductory letter" it sends out to respondents "prior to contact for field surveys.")

Second, Plaintiffs and their experts included no promise of or provision for confidentiality in the other documents and interviewer scripts used in the CV study, including the questionnaires themselves, the missed dwelling unit procedures, the household screener script, the screener hand cards, the "sorry I missed you" cards used by interviewers, the refusal conversion letter, and the refusal conversion telephone script. (See Ex. 8-9: NRDA Appendices A, C; Dkt. No. 1855: Defs.' Mot. Compel Ex. 22.)[5]

Third, when Defendants subpoenaed survey firm Consumer Logic to provide the missing survey information, Consumer Logic initially *agreed* to provide the information without objection, making clear that Consumer Logic saw no automatic confidentiality concerns. (Dkt. No. 1854: Defs.' Mot. Compel Ex. 12.) Only after Defendants received Plaintiffs' February 6, 2009 objection letter did Consumer Logic's counsel send Defendants a letter informing

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of the H-O-M in the word "Oklahoma" in conjunction with the logo). (Ex. 7: ChapmanCORR0000175.)

[5] In fact, it appears that Plaintiffs' entire CV report includes only one reference to the word "confidentiality." That reference appears as a contingent instruction to interviewers that might be given in response to a respondent's answer to Question 53 of the 57-question survey. (Ex. 8: NRDA A-106.) In asking Question 53, interviewers were instructed to ask for a respondent's total annual family income. (Id.) The instruction to the interviewer indicates: "If R is unwilling to report income, first say, 'This data is confidential and will not be associated with you in any way.'" (Id.) This contingent instruction, which might have been given at the tail end of a 30-60 minute interview to a respondent if the respondent expressed a concern about providing income data, does not support Plaintiffs' claim that Westat or Plaintiffs' other experts were concerned about the confidentiality of the responses. Nor can it be considered a general assurance of confidentiality, because most of the survey questions would have been answered by the time the limited assurance might have been given.

Defendants that—contrary to the prior memorialized understanding between Defendants and Consumer Logic—the firm would object to Defendants' subpoena. (Id. Ex. 14.) Notably, Consumer Logic's belated objection letter recites many of the same objections raised by Plaintiffs' counsel. (Id.)[6]

Fourth, Plaintiffs' own documents disprove Plaintiffs' contentions (1) that only "[l]imited information" was provided to their testifying experts, and (2) that such information related to participants "not involved in the main survey." (Dkt. No. 1853: Pls.' Mot. Prot. Ord. at 9). The information provided to Plaintiffs' testifying experts on the conversion call list was not "limited;" it included the participant's name, address, area code, and telephone number; number of times the participant was contacted; date of last contact with the participant; interviewer name; and comments made by interviewers and survey participants. (Dkt. No. 1855: Defs.' Mot. Compel Ex. 19, filed under seal.) Likewise, all of the persons identified on the conversion call list were involved in the "main" study; indeed, the purpose of distributing the list to Plaintiffs' testifying experts was so that those experts could call the participants to increase the response rate of the "main" study and to get the participants to complete the questionnaire. (Dkt. No. 1854: Defs.' Mot. Compel Ex. 7.) This information that was used by Plaintiffs' testifying experts is the same information that Plaintiffs refuse to provide to Defendants.

Finally, as detailed in Defendants' motion to compel, Plaintiffs have already disclosed to Defendants the names, addresses, and other identifying information for 189 of the survey respondents, all without any effort at redaction or designation as "Confidential" under the Court's existing protective order. (Dkt. No. 1854: Defs.' Mot. Compel at 15-17.) Only after

[6] On a related note, neither Consumer Logic nor Wilson Research Strategies, Inc. cited to either CASRO's or AAPOR's professional code in objecting to Defendants' subpoenas. (Dkt. No. 1854: Defs.' Mot. Compel Exs. 14, 15.)

realizing that Defendants' experts needed the information did Plaintiffs refuse to produce the remainder.

In sum, not only did Plaintiffs and their experts fail to create credibly confidential information at the beginning of the process, they have not treated the information as confidential thereafter. It appears that the only time that Plaintiffs are concerned about the confidentiality of their survey respondents names and contact information is when Defendants wish to have it or use it.

III. Courts Routinely Order the Disclosure of Confidential Information, Including the Identities of Survey Participants

Finally, the legal discussion Plaintiffs offer does not support any finding of good cause for a protective order here. Although conceding that there is no surveyor-respondent privilege, (Dkt. No. 1853: Pls.' Mot. Prot. Ord. at 10 (quoting FJC Manual at 272)), Plaintiffs essentially argue that identifying information generated in conducting surveys is owed automatic and complete immunity from disclosure. Such information, however, is not afforded automatic protection; indeed, even valuable trade secret information does not enjoy automatic protection. Instead, courts balance the privacy interests raised against the need for disclosure.[7] See Fed. R. Civ. P. 26(c) advisory committee note to 1970 amendments ("The courts have not given trade secrets automatic and complete immunity against disclosure, but have in each case weighed their claim to privacy against the need for disclosure."). And "orders forbidding any disclosure of trade secrets or confidential commercial information are rare." Fed. Open Market Comm. of Fed. Reserve Sys. v. Merrill, 443 U.S. 340, 363 (1979). Indeed, many of the courts that

[7] Thus, the CASRO and AAPOR standards Plaintiffs cite (See Dkt. No. 1853: Pls.' Mot. Prot. Ord. at 2) do not bind this Court, but are simply factors for the Court to consider in its balancing.

Plaintiffs cite in support of their motion actually ordered disclosure of the requested information. See, e.g., Centurion Indus., Inc. v. Warren Steurer & Assocs., 665 F.2d 323, 325-27 (10th Cir. 1981) (affirming district court's order to disclose trade secret information under a protective order); Covey Oil Co. v. Continental Oil Co., 340 F.2d 993, 997-98 (10th Cir. 1965) (same).

The factors present here strongly favor disclosure. First, any claims of confidentiality concerns fall apart where there is no "legitimate claim" for confidentiality. (Dkt. No. 1853: Pls.' Mot. Prot. Ord. at 10 (quoting FJC Manual at 272).) Here, as discussed above, Plaintiffs' experts considered but decided *not* to extend assurances of confidentiality to survey respondents. Plaintiffs' survey firm Westat then disclosed the same type of information they now seek to prevent Defendants from accessing and using to Plaintiffs' testifying experts, who viewed and used the information by contacting individual survey participants. (Dkt. No. 1855: Defs.' Mot. Compel Ex. 19, filed under seal.) The legitimacy of Plaintiffs' claim of confidentiality here is thus very thin.

In contrast, the factors favoring disclosure are quite strong. As discussed above, Defendants' expert has identified multiple ways in which Defendants need the withheld information for a full analysis of the validity of both the CV survey and the Plaintiffs' testifying experts' opinions that rely on it. And as detailed in Defendants' brief in support of their motion to compel (Dkt. No. 1854 at 18-20), a number of courts have determined that the disclosure of survey participants' identities is warranted to allow the party against whom that survey data is used "to properly evaluate and rebut the reliability of the survey." U.S. Surgical Corp. v. Orris, Inc., 983 F. Supp. 963, 970 (D. Kan. 1997). Courts have even ordered disclosure where confidentiality had been promised. See, e.g., Static Control Components, Inc. v. Lexmark Int'l,

Inc., Civ. No. 04-84, 2007 WL 102088, at *6 (E.D. Ky. Jan. 10, 2007); U.S. Surgical Corp., 983 F. Supp. at 970.

None of the cases Plaintiffs cite in support of their motion suggest that Plaintiffs have good cause for withholding the contact information here. In one of the cases, Comm-Tract Corp. v. Northern Telecom Inc., 143 F.R.D. 20, 24 (D. Mass. 1992), the court actually granted the defendant's motion to compel and ordered disclosure of the identifying information at issue. In three of the other cases, the survey at issue was conducted for purposes independent of any litigation. See Farnsworth. v. Procter & Gamble, 758 F.2d 1545, 1546-47 (11th Cir. 1985) (noting study was a Center for Disease Control research study that involved "highly personal and potentially embarrassing information" such as medical histories, sexual practices, contraceptive methods, pregnancy histories, menstrual activity, tampon usage, and douching habits); Lampshire v. Proctor & Gamble Co., 94 F.R.D. 58, 59 (N.D. Ga. 1982) (noting study at issue was Center for Disease Control research project involving very private medical information concerning personal hygiene, menstrual flow, sexual activity, contraceptive methods, history of pregnancies, douching habits, and tampon use); Richards of Rockford, Inc. v. Pac. Gas & Elec. Co., 71 F.R.D. 388, 390 (N.D. Cal. 1976) ("The research project for which the interviews were conducted was not initiated with an eye to this litigation.").

In contrast here, Plaintiffs' CV study was conducted specifically to support the Plaintiffs' case and has no conceivable value outside this litigation. Courts predictably give greater protections to survey respondent identities in non-litigation surveys; the circumstantial guarantees of survey trustworthiness are clearly greater where the interests of the survey designer and the survey proponent are not inherently aligned and the opponent of the survey has less need to test for bias in the manner in which the survey was administered.

The remaining two cases Plaintiffs cite are also distinguishable from the present case. Applera Corp. v. MJ Research Inc., a patent infringement case, did not involve either a motion to compel or a motion for protective order; the court simply reviewed and denied a motion for a new trial based on the moving party's failure to show the non-moving party had violated Federal Rule of Evidence 807's notice provisions. 389 F. Supp. 2d 344, 346 (D. Ct. 2005). Further, the study at issue in Applera was nothing like a CV study and certainly nothing like Plaintiffs' CV study. The Applera study involved "clear, precise, and predominantly non-leading questions" asked of persons "most knowledgeable" about the subject matter and the questions cited by the court indicate only simple yes or no answers were required. Id. at 350 & n.1. Unlike Plaintiffs' CV study, there is no indication that the survey instrument in Applera was formed after an elaborate and lengthy shaping process or that the respondents were "educated" in their living rooms about the subject matter of the questionnaire with photo arrays, maps, timelines, and lengthy descriptions of "problems" and "solutions."

Finally, In re Litton Industries, Inc, No. 9123, 1979 FTC LEXIS 311, at *8 (FTC June 19, 1979), is a Federal Trade Commission administrative law judge decision in which (unlike here) surveyors actually promised to preserve the survey respondents' confidentiality. Significantly, the names and addresses of the survey respondents in Litton had already been provided to opposing counsel, the interviewers were known and available for cross-examination, and the court determined the questions raised about the survey instruments could all be answered by the interviewers and supervisors of the surveys. Id. at *5-*11. In contrast here, Plaintiffs have not and cannot make a showing (beyond their own assertion) that Defendants and their experts can obtain the needed information by other means. Moreover, the studies at issue in Litton were not contingent valuation studies and differed substantially from Plaintiffs' CV study. One study was

a telephone survey of microwave repair agencies conducted to determine "the universe of independent service agencies who repaired Litton microwave ovens and one or more other brands of microwaves, particularly during the year 1976." Id. at *2. The other study was a "self-administered questionnaire" sent to microwave service agents. Id. at *3.

In sum, Plaintiffs cite no case involving either a CV survey or any other type of survey similar to Plaintiffs' CV survey here. Unlike many surveys, the design of Plaintiffs' CV survey involves extensive opportunity for the introduction of bias and other flaws. (Dkt. No. 1854: Defs.' Mot. Compel at Desvousges Decl. ¶¶ 10, 19, 25.) Plaintiffs' CV study is highly dependent on what interviewers actually told respondents, how the interviewers went about conveying this information, how the interviewers interpreted the answers, and how the interviewers inputted those answers. (Id.) The interviewer's manner in posing the questions (and the more than two years of development of those questions) shapes the response. (Id.) It is not enough to rely on the ideal script of the interview to test the reality of any resulting bias and the validity and reliability of the study.

Further, unlike the information at issue in the cases cited by Plaintiffs, any arguably sensitive information contained in any of the survey data is wholly extraneous to the information sought by Defendants. Defendants want to know how the process Plaintiffs established shaped the resulting validity and reliability of the $610 million damages figure generated after posing questions about public resources. This is a far cry from the cases cited by Plaintiffs, where respondents might have been exposed to reinterviews about very personal medical information, sexual habits, or personal hygiene, or where the subject of the information sought itself was a trade secret or other highly sensitive data. The survey data at issue here stems from surveys conducted at the direction of the State of Oklahoma for the State of Oklahoma about resources of

the State of Oklahoma for the purpose of proving damages to the State of Oklahoma and to support damages allegedly owed to the citizens of the State of Oklahoma. Defendants have shown a scientific need for all of the data sought, and Plaintiffs have offered no good cause for restricting Defendants' access to or use of the information.

CONCLUSION

For the reasons set forth above, the Court should deny Plaintiffs' motion.

Dated: February 23, 2009

Respectfully submitted,

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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s/ John H. Tucker